

DRAFT/Letter from D.Webb to The Hon.T.Sainsbury M.P.  
N.C.R.O.P.A. Headed Notepaper 1981 February 1981.

Dear Honorable Timothy Sainsbury M.P.,

I thank you for receiving me and N.C.R.O.P.A's Legal Adviser, Mr. Edward A.C.Goodman, on the 9th February. For the record, I enclose a list of the points that we raised regarding your important Parliamentary Bill.

In answer to your request for our proposed definition of "indecent" for the purposes of the Bill, it is as follows:

"The photographic representation of actual or simulated human sexual intercourse or of human genitalia in a sexual context" This will deal with the "mischief" aimed at by the Bill i.e. public displays of photographic representations of human sexual activity or of human sexual nudity, as opposed to simple human nudity e.g. in an Oxfam advertisement showing a photo of a naked Afro-Asian orphan. By confining itself to photographic representation, the Bill will avoid the risk of giving rise to controversial prosecutions of displays of the written word, drawings, paintings or sculptures, which although not technically censorship would be widely construed as such.

In answer to your query about the January 1981 obscenity case at Exeter Magistrates' Court, we understand from the Defendant, who is a supporter of N.C.R.O.P.A., that he has lodged an appeal. Therefore, the case is sub-judice until that appeal has been heard. However, the fact remains that Exeter Magistrates ruled that certain publications were obscene which in London are not regarded by the Courts as being <sup>even</sup> merely indecent. In view of the fact that England and Wales are one legal <sup>jurisdiction</sup> subject to exactly the same laws, this is an absurd situation and highlights the crying need for certainty and uniformity in English laws relating to obscenity and indecency. This is why it is so important for your Bill to be as definite as possible and and for prosecutions under it to be subject to the control

of the Director of Public Prosecutions so as to ensure a uniform prosecuting policy in this difficult area of the law throughout England, which has been one legal unit since Anglo Saxon times and should remain so.

We believe that you may be interested to know that Greece, which joined the European Community on the 1st January this year, is in the process of legalising pornography. The Greek Government expects the legislation to be enacted by the middle of this year. This means that the United Kingdom is now one of the only states in the European Community which still has laws preventing adults from reading the publications they wish or seeing the films they wish. The United Kingdom has been a full member of the European Community since 1973. One of the main aims of the European Community is the harmonization of the laws of the member states. Therefore, as nearly all the member states of the European Community have laws which allow freedom of expression, we strongly believe that your Bill should remain restricted to displays so that the United Kingdom does not become even more out of step with its partners in the European Community regarding this area of the law. Already many publications and films which are perfectly lawful throughout the rest of the European Community are prohibited in the United Kingdom. This is an intolerable situation to all believers in democracy and freedom of expression which includes the members and supporters of N.C.R.O.P.A., which is a non commercial law reform campaign dedicated to the ideal of freedom of expression and affiliated to the National Council for Civil Liberties. We practise the maxim that: "the price of liberty is enteral vigilance." This is why we have made representations to you regarding your proposed Bill. We agree that there should be some restriction on the display of material which could cause offence to a significant number of adults but that such a restriction must be clearly defined so that the law is effective and workable. That is way we have submitted constructive proposals for the improvement of your Bill. We hope that the proposals

are accepted for consideration by you and the Parliamentary Committee studying the Bill in the spirit in which they are given, namely a common desire to improve the laws of England and Wales and to safeguard democracy and freedom of expression.

Yours sincerely,

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DAVID WEBB



Section 1(2). This sub-section should be added to in order to make it clear that regarding publications "visible" only applies to the covers. Otherwise someone holding open a publication while reading it in a public place could be breaking the law e.g. page 3 of a popular newspaper. *"The Sun" newspaper*

Section 1(4). A paragraph (f) should be added allowing a defence of <sup>in the</sup> public <sup>interest</sup> ~~good~~. This is needed to allow front page newspaper photographs of unpleasant, but important incidents, such as massacres, *violent crime and natural disasters*.

Section 1(~~6~~). This should contain a definition of "indecent matter". See our suggested definition in the attached letter.

*Section 1(5)* The sub-section should also be added to in order to state that any displayed matter or any displayed part of matter should be treated as a whole for the purpose of deciding if it is "indecent." Otherwise part of a displayed cover could be ruled "indecent," whereas the displayed cover taken as a whole, is not. ~~Also, it is important that the exemption regarding the actual human body, is kept so as to protect nudist camps from prosecution.~~

Section 1(6). This sub-section should be amended so that a notice restricting entry to adults as required by sub-section (3) is sufficient. This is the law regarding sex shops in the other countries of the European Community where such notices are found to be adequate and effective. Also, the less wording required on the warning notice, the clearer, more concise and effective it becomes. In any event, a notice stating that indecent matter is being displayed would be libellous to publishers and authors of non<sup>h</sup>indecent<sup>h</sup> publications displayed in the premises.

Section 2. This should be added to as follows:  
"Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions." It is customary in English Law that prosecutions for difficult-to-define offences, require the consent of the D.P.P. e.g. the Sexual Offences

Act 1967, the Theatres Act 1968, the Protection of Children Act 1978, and the Offence of Wasting Police Time - section 5 Criminal Law Act 1967. This is because England ( as opposed to Scotland and the continental states of the European Community) has no system of Public Prosecutors - although the Royal Commission on Criminal Procedure has, last month, recommended that England should have such a system. Therefore, the Director of Public Prosecutions exercises the function of Public Prosecutor in England where necessary i.e. regarding difficult areas of the Criminal Law. Indecent displays are such an area owing to the difficulty of defining "indecent".